IN THE

Supreme Court of the United States

OCTOBER TERM, 1971

No. 71-918

ALICE LOVE, *et al.*,

Petitioners,

v.

DADE COUNTY SCHOOL BOARD, *et al.*

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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ALICE LOVE, *et al.*,

Petitioners,

v.

DADE COUNTY SCHOOL BOARD, *et al.*

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Petitioners pray that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fifth Circuit entered in the above-entitled cause on September 3, 1971.

Opinions Below

The opinions of the courts below directly preceding this petition are as follows:

1. The District Court order of June 14, 1971 is unreported and is printed in the appendix hereto, *infra*, p. 1a;
2. The District Court order of June 18, 1971 is unreported and is printed in the appendix hereto, *infra*, p. 5a;

3. The District Court order of June 30, 1971 is unreported and is printed in the appendix hereto, *infra,* p. 8a;

4. The Court of Appeals order of September 3, 1971 is unreported and is reprinted in the appendix hereto, *infra,* p. 10a.

Jurisdiction

The judgment of the Court of Appeals was entered on September 3, 1971 (appendix, p. 10a, *infra*). On November 24, 1971, Mr. Justice Stewart extended the time for filing the petition for certiorari until January 15, 1972. The jurisdiction of this Court is invoked under 28 U.S.C. Section 1254(1).

Question Presented

Whether the courts below erred by approving a desegregation plan for Dade County which leaves one-fourth of the black pupils in all-black schools without holding a hearing or making findings with respect to the issues framed in this Court's recent decisions in *Swann* v. *Charlotte-Mecklenburg Board of Education,* 402 U.S. 1 (1971) and *Davis* v. *School Commissioners of Mobile County,* 402 U.S. 33 (1971), creating a presumption against one-race schools.

Constitutional Provisions Involved

This case involves the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States.

Statement of the Case

Introduction

This is a school desegregation case involving the public education system of Dade County, Florida. Petitioners seek review by this Court of the extent to which the desegregation plan currently in force in that school system meets the constitutional requirements established in *Brown* v. *Board of Education*, 347 U.S. 483 (1954), *Green* v. *County School Board of New Kent County*, 391 U.S. 430 (1968), and *Swann* v. *Charlotte-Mecklenburg Board of Education*, 402 U.S. 1 (1971). In the rulings below which petitioners here challenge, the district court permitted the Dade County School Board [hereinafter, "the Board"] to continue operating its system during 1971-72 essentially in accordance with a desegregation plan which the Fifth Circuit Court of Appeals ordered implemented at the commencement of the 1970-71 academic year.[1]

The Dade County system was segregated by law at the time of *Brown, supra* and continued to operate schools in which no significant desegregation was achieved for many years thereafter. As recently as the 1969-70 academic year, the Board was administering 217 schools enrolling 262,295 students of which 25.8% were black. At that time approximately 57.9% of the total black enrollment attended 85-100% black schools.[2] Though the court of appeals order of August, 1970 reduced the number of virtually all-black

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[1] The Fifth Circuit's exhaustive decision setting out a desegregation plan for Dade County schools is reported in *Pate* v. *Dade County School Board*, 434 F.2d 1151 (5th Cir. 1970), *cert. denied*, 402 U.S. 953 (1971). Earlier proceedings in the same case are reported at 303 F.Supp. 1068 (S.D.Fla., 1969); 307 F.Supp. 1288 (S.D.Fla., 1969) *remanded for further proceedings*, 430 F.2d 1175 (5th Cir., 1970); 315 F.Supp. 1161 (S.D.Fla., 1970).

[2] "Final Desegregation Plan" (March 31, 1970).

schools in the system, statistics on the progress of desegregation for the 1970-71 and the 1971-72 academic years point up the substantial degree to which vestiges of the state-imposed dual system are still present in Dade County. In September, 1970, black students constituted 25% of the total population of which 29% were enrolled in 85-100% black facilities.[3] For the 1971-72 academic year, black students represent 26% of the total enrollment in Dade County Schools. Twenty-three percent (23%) of this total black enrollment attend 85-100% black facilities.[4]

Proceedings Below

On May 26, 1971, the Board filed with the district court a set of proposed modifications, for the 1971-72 academic year, of the desegregation plan mandated by the Fifth Circuit Court of Appeals in August, 1970. By order of June 14, 1971, the district court indicated that it had retained jurisdiction of the Dade County case only "to assure that the school system was continually maintained in a unitary manner." Since, in its view, the system had been declared unitary, the court saw its only responsibility as that of assuring that the school system did not revert to a state-imposed dual system. It granted all parties an opportunity to file responses to the Board's proposed modifications and to be heard at a hearing set for June 18, 1971. On June 16, 1971, petitioners filed objections to the Board's proposals, arguing that the Court should reject suggested modifications which: (1) sought to increase the ratio of white students in three schools which enrolled children of both races in 1970-71; and (2) established boundaries for

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[3] Report to Court (December 4, 1970).

[4] Report to Court (November 10, 1971). These statistics were not available to the Courts below during the most recent proceedings in this case. However, data from the November, 1971 report is set out in the appendix hereto, *infra*, p. 11a for this Court's benefit.

five or six new schools in such a way as to assure all-white or virtually all-white enrollments. Petitioners approved of the Board's proposal to reduce substantially predominantly black enrollments in four schools. However, the objection noted that, since boundary changes for 27 of the 40 schools considered made no significant alteration in the degree of desegregation in those facilities, the Board's proposals constituted "nonaction".

After the June 18, 1971 hearing, the district court immediately entered an order rejecting petitioners' objections and approving the Board's modifications for 1971-72. Furthermore, the court held that thereafter the Board would not be required to petition the court for approval of any proposed modification in its desegregation plan. In the future, the burden would be upon the petitioners and other intervenors to demonstrate to the court a prima facie case of the Board's failure to maintain a unitary school system. On June 22, 1971, petitioners and another intervenor, the Dade County Classroom Teachers' Association (C.T.A.),[5] filed motions with the district court for an evidentiary hearing at which the Dade County system could be re-evaluated in light of new guidelines established by this Court in *Swann, supra* and *Davis* v. *School Commissioners of Mobile County*, 402 U.S. 33 (1971). The motions of petitioners and the C.T.A. set out in great detail, among other matters, the extent to which the Board, the Florida School Desegregation Consulting Center (HEW), the district court and the court of appeals (1) had rejected the use of non-contiguous pairings and groupings of schools and "cross-busing" in attempting to desegregate the Dade County system; (2) had failed to use the system-wide black-to-white

[5] Although the C.T.A. does not join in this petition for a writ of certiorari, it was co-appellant with the petitioners herein before the Fifth Circuit Court of Appeals in case No. 71-2338.

ratio as a starting point in fashioning a desegregation plan; and (3) had not entertained a presumption against the continued operation of one-race schools, in evaluating in 1970 alternative methods for desegregating the Dade County system. The motions asserted that *Swann*, *supra* and *Davis*, *supra*, now required the district court to employ the criteria it rejected in 1970 to determine whether the Dade County system was truly "unitary". Such a reconsideration, petitioners contended, would establish: first, that existing black schools in the system were vestiges of the state-imposed dual system; and, second, that each of these black schools could be desegregated fully in a feasible manner using techniques approved by this Court in *Swann*, *supra*. It was submitted that, in any event, the burden was upon the Board to show why the remaining black schools could not be desegregated based upon *Swann* guidelines.

On June 30, 1971, the district court denied motions of petitioners and the C.T.A. for an evidentiary hearing. Petitioners duly filed Notice of Appeal to the Fifth Circuit from the June 18 and June 30 orders of the district court. On September 3, 1971, without oral argument, the court of appeals summarily affirmed the district court's denial of an evidentiary hearing.

Reasons for Granting the Writ

This case merits review on certiorari because the courts below have permitted one of the ten largest school systems in the nation to continue operating numerous segregated schools without applying the legal principles announced by this Court in *Swann* v. *Charlotte-Mecklenburg Board of Education*, 402 U.S. 1 (1971), and *Davis* v. *School Commissioners of Mobile County*, 402 U.S. 33 (1971). Indeed, the desegregation plan in effect in Dade County is explicitly

premised on the Fifth Circuit's reasoning in the *Davis* case which this Court has reversed. There has been no reconsideration of the details of the Dade County plan by either court below since *Swann* and *Davis*, and there are no findings and conclusions which address the important doctrines enunciated by this Court in those decisions. We think that the matter presents so plain a conflict with this Court's recent decisions, and the time available to prepare a new plan for next year is so short, that this Court should grant certiorari and summarily reverse, directing further proceedings conformable to *Swann* and *Davis*.[6]

The decisions of the courts below approve a desegregation plan for Dade County, Florida under which a substantial proportion of black student population will remain indefinitely in virtually all-black schools. Court sanction was given to the desegregation plan in force based upon legal theories that pre-date and clearly conflict with doctrines articulated by this Court in *Swann* and *Davis*. Nevertheless, the courts below have summarily rejected petitioners' contention that these most recent pronouncements establish new constitutional standards against which all prior efforts to dismantle dual, segregated school systems must be measured.

Official Board reports for the 1970-71 and 1971-72 academic years reveal that substantial numbers of students are continuing to attend one-race schools in Dade County. In September, 1970, the Board operated 218 schools, enrolling 239,218 students. Of that total, 179,318 students were white and 59,000 were black (75% white, 25% black).

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[6] This Court has found such disposition appropriate in several recent school desegregation cases. *Carter* v. *West Feliciana Parish School Board*, 396 U.S. 290 (1970); *Northcross* v. *Board of Education*, 397 U.S. 232 (1970); *Bradley* v. *School Board of Richmond*, 382 U.S. 103 (1965); and *Rogers* v. *Paul*, 382 U.S. 198 (1965). *Cf. Goss* v. *Board of Education of Knoxville*, 403 U.S. 956 (1971).

During that year, 83 schools had 99-100% white enrollments and seventeen (17) schools had enrollments between 85-100% black. Ten of these seventeen schools were 99-100% black, three were 90-94% black and four had between 85-89% black enrollments. These virtually all-black schools enrolled 17,131 or 29% of the total black student population of Dade County.[7] In this current academic year, 1971-72, the Board is operating 218 schools in which a total of 245,242 students are enrolled. Of that number, 182,029 students are white and 62,213 are black (74% white, 26% black). There are 69 schools which have between 99-100% white enrollments and fifteen (15) schools with between 85-100% black enrollments. Ten of these schools have 99-100% black student bodies, three are 91-95% black and two have 87% and 89% black enrollments. Approximately 14,686, or 23% of the black enrollment of Dade County attend these

[7] The 17 virtually all-black schools operated during 1970-71 were as follows:

School	*Grades Served*	*Black Students*	*White Students*	*% Black*
North County	K-6	970	134	88
C.R. Drew	K-6	951	0	100
L.C. Evans	K-6	991	4	99
Holmes	1-3	607	38	94
Liberty City	K-6	820	0	100
Olinda	1-6	863	1	99
Orchard Villa	K-6	1273	0	100
Poinciana Park	K-6	1208	0	100
C.R. Drew	7-9	1247	0	100
Miami-Northwestern	9-12	2265	2	99
Allapattah	6	231	18	93
Earlington Heights	K-6	892	2	99
Floral Heights	1-6	745	0	100
F.S. Tucker	K-3	490	84	85
Miami-Jackson	10-12	2267	282	89
Pine Villa	1-6	1039	69	94
Goulds	1-6	272	47	85
	Total	17,131	681	

fifteen schools.[8] The schools that are virtually all-black in 1971-72 were all over 95% black in 1969 when the first significant steps were taken to dismantle the state-imposed dual system in Dade County. And it is reasonable to assume that substantial numbers of black students will attend one-race schools in the future. For, if the Board's May 26, 1971 proposal is any guide, prospective modifications of the current plan, at best, will have no impact upon desegregation. At worst, such alterations will create additional one-race schools. Furthermore, the district court has so circumscribed its own authority to require further desegregation that it cannot be expected to take any initiative in reducing the number of one-race schools in the Dade County System.

However, this Court's decisions in *Swann* and *Davis* provide guidelines for evaluating the constitutionality of desegregation plans like Dade County's which envision the continued existence of one-race schools. First, "having once found a violation, the district judge or school authori-

[8] The following fifteen schools have virtually all-black enrollments for 1971-72:

School	*Grades Served*	*Black Students*	*White Students*	*% Black*
North County	K-6	1105	111	91
C.R. Drew	K-6	902	0	100
L.C. Evans	K-6	1018	0	100
Holmes	K-3	706	34	95
Liberty City	K-6	829	0	100
Olinda	K-6	884	0	100
Poinciana	K-6	1141	0	100
Orchard Villa	K-6	1274	0	100
C.R. Drew	7-9	1217	0	100
Miami-Northwestern	9-12	2187	4	99
Allapattah	6	301	45	87
Earlington Heights	K-6	889	8	99
Floral Heights	K-6	843	0	100
Goulds	K-6	318	41	89
Pine Villa	K-6	1072	68	94
	Totals	14,686	311	

ties should make every effort to achieve the greatest possible degree of actual desegregation, taking into account the practicalities of the situation." *Davis, supra,* at 37. Second, in attempting to achieve maximum desegregation, school boards and courts should recognize the existence of "a presumption against schools that are substantially disproportionate in their racial composition." *Swann, supra,* at 26. And finally, *Swann* holds that:

> Where the school authority's proposed plan for conversion from a dual to a unitary system contemplates the continued existence of some schools that are all or predominantly of one race, they have the burden of showing that such school assignments are genuinely nondiscriminatory. The court should scrutinize such schools and the burden upon school authorities will be to satisfy the court that the racial composition is not the result of present or past discriminatory action on their part. (*Id.* at 26)

Neither of the courts below has ever addressed itself to these issues framed by *Swann* and *Davis*. In its August, 1970 decision which outlined what it viewed as a constitutional desegregation plan for Dade County,[9] the court of appeals explicitly relied upon its *Davis* decision[10] (later reversed in this Court), and three similar cases.[11] In each of those cases, the court of appeals reduced the percentage of black children in virtually all-black schools to between 20-

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[9] *Pate* v. *Dade County School Board*, 434 F.2d 1151, 1152 (5th Cir. 1970).

[10] *Davis* v. *School Commissioners of Mobile County*, 430 F.2d 883 (5th Cir. 1970), *reversed*, 402 U.S. 33 (1971).

[11] *Ellis* v. *Board of Public Instruction*, 423 F.2d 874 (5th Cir. 1970); *Mannings* v. *Board of Public Instruction*, 427 F.2d 874 (5th Cir. 1970); and *Bradley* v. *Board of Public Instruction*, 431 F.2d 1377 (5th Cir. 1970).

25% through the use of equi-distant zoning or contiguous pairing and grouping of schools without doing violence to what it denominated "the neighborhood school concept." Non-contiguous groupings and "cross-busing" were rejected as incompatible with the neighborhood concept; respect for district lines was necessary to maintain a viable neighborhood school system; and the presumption was not against the continued existence of one-race schools but in favor of their existence where disruption of a "neighborhood" would be required to desegregate such facilities. The court of appeals strictly adhered to identical principles in this case. For example, it determined that the desegregation of six north central district virtually all-black schools was infeasible because:

> the attendance zones of all six of these schools are bordered by attendance zones of schools which are either already paired with outlying substantially white schools or are all-Negro themselves. (*Pate, supra,* at 1155).

The court gave no consideration to the possibility of non-contiguous groupings of the six schools with predominantly white schools in the northeast district. And, without making any findings on the times or distances related to student transportation, the court of appeals determined that the Drew Junior High could not be desegregated because it was:

> situated in the northern part of that concentration of the Negro elementary schools in the center of the City of Miami discussed above and is also over three miles from the nearest predominantly white junior high. (*Id.* at 1157.)

As a consequence of these arbitrary limitations imposed upon what techniques could be used to achieve greater

desegregation, the court of appeals decision left approximately 24% of the black student population in virtually all-black schools.

It cannot be denied that *Swann* and *Davis* forthrightly rejected and overruled the "neighborhood school concept" standards articulated by the 1970 Fifth Circuit decisions in this case and other cases. In *Davis*, this Court held:

> A district court may and should consider the use of all available techniques including restructuring of attendance zones and both contiguous and non-contiguous attendant zones. (*Davis* at 37.)
>
> • • •
>
> On the record before us, it is clear that the Court of Appeals felt constrained to treat the eastern part of metropolitan Mobile in isolation from the rest of the school system and that inadequate consideration was given to the possible use of bus transportation and split-zoning. (Id. at 37.)

And *Swann* pointed out that objection to increased transportation based upon opposition to "cross-busing" *per se* was constitutionally irrelevant. Valid objection to transportation could be raised only "when the time or distance is so great as to either risk the health of the children or significantly impinge on the educational process." *Swann, supra* at 30-31.

Yet, in the most recent proceedings in this case, the courts below failed once again to address themselves to the issues raised by *Swann* and *Davis* with respect to the continued existence of one-race schools. Petitioners' motion and that of the C.T.A. for an evidentiary hearing not only correctly pointed up the fact that the Dade County system was presumed unconstitutional in light of this Court's discussion of one-race schools in *Swann* and *Davis*. It

alleged, in addition, that feasible means existed for desegregating all of the remaining virtually all-black schools in the system. Armed with this presumption of unconstitutionality and with allegations that the "greatest possible degree of actual desegregation" had not been achieved in Dade County, petitioners were properly entitled to an evidentiary hearing before the district court. Petitioners submit that until the Dade County system has been subjected to and has met the standards established by *Swann* and *Davis*, neither the Board nor the courts below can legitimately claim to have eradicated all vestiges of the dual system.

CONCLUSION

For the foregoing reasons, it is respectfully submitted that this Court should grant certiorari, summarily reverse the judgment below, and direct further proceedings conformable to *Swann* and *Davis*.

Respectfully submitted,

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APPENDIX

Order Dated June 14, 1971

IN THE

UNITED STATES DISTRICT COURT

IN AND FOR THE SOUTHERN DISTRICT OF FLORIDA

MIAMI DIVISION

No. 69-1020-Civ-CA

HERBERT PATE, *et al.*,

Plaintiffs,

v.

DADE COUNTY SCHOOL BOARD, *et al.*

Defendants.

By order dated June 26, 1970, as modified by order dated July 24, 1970, this Court found the Dade County school system to be a unitary school system in which all vestiges of a state-imposed dual school system had been eliminated. *Pate* v. *Dade County School Board*, 315 F. Supp. 1161 (S. Dist. Fla. 1970). On August 12, 1970 the Fifth Circuit Court of Appeals, after affirming all of the changes in the School Board plan made by this Court and ordering several further changes, stated that "Implementation of these modifications effectively desegregate the Dade County School system." *Pate* v. *Dade County School Board*, 434 F.2d 1151, 1154 (5th Cir. 1970), *cert. den.* 39 U.S.L.W. 3487 (U.S. May 4, 1971). This Court retained jurisdiction to assure that the school system was continually maintained in a unitary manner.

Order Dated June 14, 1971

Once having disestablished the dual school system and eliminated racial discrimination through official action from the system, there remains vested in the authority of this Court only the responsibility to assure that the school system does not revert to a state-imposed dual school system. *See, Swann* v. *Charlotte-Mecklenburg Board of Education*, 39 U.S.L.W. 4437 (U.S. April 20, 1971).

The Court is aware, from the proposed plan as well as from letters from concerned parents, that there are serious problems which must be overcome before the approved plan can be improved to meet everyone's approval. Some of the more obvious problems revolve around the withdrawal of white students from court-ordered desegregated schools and the fear of both violence and the loss of educational quality in these same schools. These problems and others do not present Constitutional issues within the Court's jurisdiction. It is not the Court's responsibility nor its authority to compel or guide the school system into an easier transition. The School Board has the responsibility to make the unitary plan work realistically to the end that quality education is made available to every child in every school of the system. It is the Court's duty to see that this responsibility is met and met in good faith with the dedication necessary to make it work. Without prejudging what may come before the Court in the future, the Court may find that the failure to act by the School Board to correct the deficiencies is prima facie evidence of an attempt to reestablish the dual school system through official action or inaction.

The Biracial Committee, appointed by this Court with the imprimatur of the Fifth Circuit Court of Appeals, has strenuously and diligently advanced the cause of making the unitary system work realistically. Its role in the transi-

tion process gains greater importance and prominence. The Committee is the Court's Committee to the extent that it shall continually review the School Board's attempts to improve the operation of the plan and to assure that racial discrimination does not reappear in the school system by official state action. The Committee is the School Board's Committee for the purpose of continually reviewing the operation of the plan and giving the School Board the benefit of their findings and recommendations. The School Board may use the services of the Committee in any way they deem most helpful. The Court has found the Committee's recommendations and insight into the school system to be extremely intuitive and immensely helpful and has every confidence in their dedication and competency. The School Board is especially urged to keep the Committee fully informed well in advance of (a) proposed acquisition of school sites and construction plans, and (b) contemplated changes in attendance zones.

With this in mind, while awaiting receipt of the mandate from the United States Supreme Court, this Court will hold a hearing on June 18, 1971 at 3:00 p.m. to determine the procedure to be utilized for the future conduct of this cause. All Intervenors not making an appearance through counsel at this hearing will be dismissed from the cause and no further pleadings shall be served upon them. Those Intervenors who desire to be heard at the hearing shall file either their objections to the proposed 1971-72 School Board plan, to the extent that it embodies changes from the modified plan approved by the Fifth Circuit Court of Appeals, (all intervenors having been served by mail on May 26, 1971) or a statement of position on or before 12:00 noon June 17, 1971.

Order Dated June 14, 1971

The Court wishes to advise all counsel that appeals in this case will be processed in accordance with Part III of *Singleton* v. *Jackson Municipal Separate School District*, 419 F.2d 1211 (5th Cir. 1970). No extensions of time are to be allowed except by order of the panel of the Fifth Circuit Court of Appeals to which the case is assigned. While the record does not have to be reproduced by printing or other similar process, three legible copies shall be filed for the use of each of the members of the panel covering all matters pertinent to the issues raised on the appeal including oral or deposition evidence, exhibits, maps, charts, plans, proposed plans, and all such other matters as are relevant to the issues presented. Counsel are entrusted with the responsibility to collaborate to assure that unneeded or unwanted portions of the record are not included. All questions should be directed to Edward W. Wadsworth, Clerk, Fifth Circuit Court of Appeals by referring to his letter of May 26, 1971.

DONE AND ORDERED at Miami, Florida this 14th day of June, 1971.

C. CLYDE ATKINS
United States District Judge

cc. All counsel of record
All members of the Bi-Racial Committee

Order Dated June 18, 1971

IN THE

UNITED STATES DISTRICT COURT

IN AND FOR THE SOUTHERN DISTRICT OF FLORIDA

MIAMI DIVISION

No. 69-1020-Civ-CA

HERBERT PATE, *et al.*,

Plaintiffs,

v.

DADE COUNTY SCHOOL BOARD, *et al.*

Defendants.

By order dated June 14, 1971, this Court established a housekeeping requirement that all Intervenors desiring to remain as parties to this cause were required to appear through counsel at 3:00 p.m. June 18, 1971. The following are those parties and their counsel who appeared at the aforesaid hearing and are therefore entitled to remain as parties to this action:

(1) Dade County Classroom Teachers Association
Tobias Simon, Attorney

(2) Alice Love, Carswell Washington, Margaret Washington and American Civil Liberties Union of Florida, Inc.
James W. Matthews and Richard Yale Feder, Attorneys

Order Dated June 18, 1971

(3) Dade County Education Association
Fred Davant, Attorney

(4) Florida Board of Education
Charles Minor, Attorney

IT IS THEREFORE ORDERED AND ADJUDGED as follows:

(a) That all other Intervenors are hereby dismissed from this cause and shall be stricken from the roll of those entitled to service;

(b) That the Motion to Intervene and Objection and Prayer for Opportunity to Prepare and Challenge of Wellington Rolle is denied without prejudice to make a detailed factual presentation which would constitute a prima facie case of the School Board's failure to maintain a unitary school system;

(c) That the objections of Intervenors Alice Love, Carswell Washington and Margaret Washington and the American Civil Liberties Union of Florida, Inc. are denied without prejudice;

(d) That the Statement of Position of the Intervenor, Classroom Teachers Association, is noted and rejected but its thrust is commended to the consideration of the School Board;

(e) That the 1971-72 Pupil Assignment Plan of the Dade County School Board, as adopted by the Board at its meeting of May 19, 1971 and filed in this cause on May 26, 1971 is hereby approved;

(f) That hereafter the School Board shall not be required to petition the Court for approval of any proposed changes in its Pupil Assignment Plan by which it desires

to improve the effectiveness of the Plan. The burden shall be upon the present intervenors, or any other persons hereafter permitted to intervene, to demonstrate to this Court a prima facie case of the School Board's failure to act in accordance with the principles outlined in this Court's order of June 14, 1971. Jurisdiction is retained for this limited purpose.

DONE AND ORDERED at Miami, Florida this 18th day of June, 1971.

C. CLYDE ATKINS
United States District Judge

cc. George Bolles, Esq.
Tobias Simon, Esq.
James W. Matthews, Esq.
Richard Y. Feder, Esq.
Fred Davant, Esq.
Charles Minor, Esq., Florida Board of Education
Mr. Wellington Rolle

Order on Motions For Evidentiary Hearing

IN THE

UNITED STATES DISTRICT COURT

IN AND FOR THE SOUTHERN DISTRICT OF FLORIDA

MIAMI DIVISION

No. 69-1020-Civ-CA

HERBERT PATE, *et al.*,

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DADE COUNTY SCHOOL BOARD, *et al.*

Defendants.

The Dade County Classroom Teachers Association (CTA) and certain Intervenors have moved this Court for an evidentiary hearing *de novo* to determine whether or not the Dade County School system is unitary. In so doing, the movants contend that *Swann v. Charlotte-Mecklenburg Board of Education*, 39 U.S.L.W. 4437 (U.S. April 20, 1971), dictates guidelines not previously considered in earlier rulings by this Court and the Court of Appeals for the Fifth Circuit in which the Dade County Schools were found to be unitary. The Supreme Court, after *Swann, supra,* denied certiorari by which the Dade County School Board challenged these orders. 39 U.S.L.W. 3487 (U.S. May 4, 1971).

The Court has carefully considered the *Swann* opinion vis a vis the orders of the district court and the Fifth Circuit Court of Appeals. While no cross-bussing was ordered

in the prior approvals of the plan under which the Dade County School system is operated, there is no doubt but that the effect of the district court order as modified by the appellate court was to require the extensive use of bus transportation to achieve the results directed. This Court being of the opinion that an evidentiary *de novo* is not required, the above motions are denied.

The Court reaffirms its earlier direction that the Biracial Committee "shall continuously review the school board's attempts to improve the operation of the plan and to assure that racial discrimination does not reappear in the school system by official state action." Additionally, the School Board is requested to file semi-annual reports during the school year similar to those required in *United States* v. *Hinds County School Board*, 433 F.2d 611, 618-619 (5 Cir. 1970).

ENTERED at Miami, Florida this 30th day of June, 1971.

C. CLYDE ATKINS
United States District Judge

Opinion of United States Court of Appeals For the Fifth Circuit

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT
No. 71-2338

HERBERT PATE, *et al.*,
Plaintiffs,

v.

DADE COUNTY SCHOOL BOARD, *et al.*,
Defendants-Appellees,

v.

ALICE LOVE, CARSWELL WASHINGTON, *et al.*,
Intervenors-Appellants,

DADE COUNTY CLASSROOM TEACHERS' ASSOCIATION, INC.,
Intervenor-Appellant.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF FLORIDA

(September 3, 1971)

Before:

BROWN, *Chief Judge,*
MORGAN and INGRAHAM, *Circuit Judges.*

PER CURIAM:

AFFIRMED. See Local Rule 21.[1]

[No separate judgment was entered.]

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[1] See NLRB v. Amalgamated Clothing Workers of America, 5 Cir., 1970, 439 F.2d 966.

Exhibit I(b)

DADE COUNTY PUBLIC SCHOOLS

Racial Composition as of September 27, 1971

Northeast District—Elementary Schools

School	Grade	White	Black	Total	% White	% Black
Bay Harbor	K-6	416	0	416	100	0
Biscayne	K-6	503	5	508	99	1
Biscayne Gardens	K-6	761	16	777	98	2
Bryan, W. J.	K-6	801	4	805	99	1
Fienberg, L. D.	K-6	464	6	470	99	1
Fulford	K-6	502	79	581	86	14
Gratigny	K-6	643	4	647	99	1
Greynolds Park	K-6	635	0	635	100	0
Hibiscus	K-6	611	1	612	99	1
Highland Oaks	K-6	669	4	673	99	1
Ives, Madie	K-6	678	1	679	99	1
Natural Bridge	K-6	289	66	355	81	19
Norland	K-6	890	0	890	100	0
North Beach	K-6	680	22	702	97	3
North Miami	K-6	587	37	624	94	6
Norwood	K-6	581	1	582	99	1
Oak Grove	K-6	562	34	596	94	6
Ojus	K-6	372	20	392	95	5
Parkway	K-6	563	5	568	99	1
Sabal Palm	K-6	958	2	960	99	1
South Beach	K-6	457	12	469	97	3
Treasure Island	K-6	433	3	436	99	1
Total (K-6)		13,055	322	13,377	98	2

Northeast District—Secondary Schools

School	Grade	White	Black	Total	% White	% Black
Ctr. for Spec. Inst.-NE	7-12	2	9	11	18	82
Fisher, Ida M. Jr.	7-9	585	182	767	76	24
Jefferson, T. Jr.	7-9	920	147	1067	86	14
Kennedy, J. F. Jr.	7-8	1347	153	1500	90	10
Miami Beach Sr.	10-12	2005	327	2332	86	14
Miami Norland Sr.	10-12	2215	413	2628	84	16
Nautilus Jr.	7-9	1205	188	1393	87	13
Norland Jr.	7-9	1494	169	1663	90	10
North Miami Jr.	7-9	1172	149	1321	89	11
North Miami Sr.	10-12	2711	205	2916	93	7
North Miami Beach Sr.	9-11	2510	281	2791	90	10
Total (7-12)		16,166	2,223	18,389	88	12
District Total	K-12	29,221	2,545	31,766	92	8

Exhibit I(b)

DADE COUNTY PUBLIC SCHOOLS

Racial Composition as of September 27, 1971

Northwest District—Elementary Schools

School	Grade	White	Black	Total	% White	% Black
Bunche Park	K, 3-6	248	370	618	40	60
Carol City	K-6	875	164	1039	84	16
Crestview	K-6	703	8	711	99	1
DuPuis	K-6	559	8	567	99	1
Earhart, Amelia	K-6	644	18	662	97	3
Flamingo	K-6	871	2	873	99	1
Golden Glades	K-6	401	400	801	50	50
Lake Stevens	K-6	612	95	707	87	13
Meadowlane	K-6	789	6	795	99	1
Miami Gardens	K-6	425	279	704	60	40
Miami Lakes	K-6	737	0	737	100	0
Milam, M. A	K-6	559	0	559	100	0
Myrtle Grove	K-6	864	195	1059	82	18
North Carol City	K-6	508	429	937	54	46
North County	K-6	111	1105	1216	9	91
North Glade	K-6	1113	78	1191	93	7
North Hialeah	K-6	781	4	785	99	1
North Twin Lakes	K-6	512	0	512	100	0
Opa-locka	K-6	621	317	938	66	34
Palm Lakes	K-6	569	12	581	98	1
Palm Springs	K-6	799	11	810	99	1
Palm Springs N.	K-6	1147	0	1147	100	0
Parkview	K-4	319	226	545	59	41
Pilot House, The	1-6	27	18	45	60	40
Rainbow Park	K-6	238	389	627	38	62
Scott Lake	K-4	439	239	678	65	35
Twin Lakes	K-6	701	0	701	100	0
Walters, Mae	K-6	1064	33	1097	97	3
Total (K-6)		17,237	4,396	21,633	80	20

Exhibit I(b)

DADE COUNTY PUBLIC SCHOOLS

Racial Composition as of September 27, 1971

Northwest District—Secondary Schools

School	Grade	White	Black	Total	% White	% Black
Carol City Jr.	7-9	1642	649	2291	72	28
Filer, Henry H. Jr.	7-9	2011	189	2200	91	9
Hialeah Jr.	7-9	1153	124	1277	90	10
Hialeah Sr.	10-12	3494	9	3503	99	1
Hialeah-Miami Lakes Sr.	9-11	1830	189	2019	91	9
Miami Carol City Sr.	10-12	1940	680	2620	74	26
North Dade Jr.	7-9	282	928	1160	20	80
Palm Springs Jr.	7-9	1789	0	1789	100	0
Parkway Jr.	7-9	1214	456	1670	73	27
Youth Oppor. Sch. No.	7-9	65	53	118	55	45
Total (7-12)		15,370	3,277	18,647	82	18
District Total	K-12	32,607	7,673	40,280	81	19

North Central District—Elementary Schools

School	Grade	White	Black	Total	% White	% Black
Arcola Lake	K-3	408	538	946	43	57
Blanton, Van E.	K, 4-6	350	475	825	42	58
Bright, James H.	K-5	768	179	947	81	19
Broadmoor	K-3	543	485	1028	53	47
Curtiss, Glenn	K, 5-6	164	221	385	43	57
Drew, C. R.	K-6	0	902	902	0	100
Edison Park	K, 3-4	363	522	885	41	59
Evans, L. C.	K-6	0	1018	1018	0	100
Franklin, Benj.	K-6	661	3	664	99	1
Gladeview	K, 5-6	122	291	413	30	70
Hialeah	K-4	522	307	829	63	37
Holmes	K-3	34	706	740	5	95
Johnson, J. W.	6	115	30	145	79	21
King, M. L. Prim.	K-2	139	200	339	41	59
Lakeview	K-6	680	19	699	97	3
Liberty City	K-6	0	829	829	0	100
Little River	K, 5-6	338	702	1040	33	67
Lorah Park	K-4	145	500	645	22	78
M. Edison Middle	6	189	231	420	45	55
Miami Park	K-6	878	307	1185	74	26
Miami Shores	K-6	986	8	994	99	1
Miami Springs	K-6	493	43	536	92	8
Morningside	K-5	480	15	495	97	3
Olinda	K-6	0	884	884	0	100
Orchard Villa	K-6	0	1274	1274	0	100
Poinciana Park	K-6	0	1141	1141	0	100

Exhibit I(b)

DADE COUNTY PUBLIC SCHOOLS

Racial Composition as of September 27, 1971

North Central District—Elementary Schools (continued)

School	Grade	White	Black	Total	% White	% Black
Primary School "C"	K-2	106	287	393	27	73
Shadowlawn	K-5	317	592	909	35	65
South Hialeah	K-6	1252	6	1258	99	1
Springview	K-6	588	1	589	99	1
W. Little River	K, 4-6	394	615	1009	39	61
Westview	K-3	286	246	532	54	46
Young, Nathan	K, 4-6	190	279	469	41	59
Total (K-6)		11,511	13,856	25,367	45	55

North Central District—Secondary Schools

School	Grade	White	Black	Total	% White	% Black
C.O.P.E. Center	7-12	1	84	85	1	99
Drew, C. R. Jr.	7-9	0	1217	1217	0	100
MacArthur, D. Jr. Sr.	7-12	266	37	303	88	12
Madison Jr.	7-9	642	641	1283	50	50
Mann, Horace Jr.	7-9	810	357	1167	69	31
Miami Central Sr.	9-12	1830	1343	3173	58	42
Miami Edison Middle	7-8	341	577	918	37	63
Miami Edison Sr.	9-12	1237	1055	2292	54	46
Miami Northwestern Sr.	9-12	4	2187	2191	1	99
Miami Springs Jr.	8-9	530	861	1391	38	62
Miami Springs Sr.	9-12	2977	531	3508	85	15
Westview Jr.	7-9	897	374	1271	71	29
Total (7-12)		9,535	9,264	18,799	51	49
District Total	K-12	21,046	23,120	44,166	48	52

South Central District—Elementary Schools

School	Grade	White	Black	Total	% White	% Black
Allapattah	K, 3-5	180	888	1068	17	83
Allapattah Jr.	6	45	301	346	13	87
Auburndale	K-6	915	10	925	99	1
Bethune	K-3	209	432	641	33	67
Buena Vista	K-2	287	135	422	68	32
Carver, G. W.	K-2	281	274	555	51	49
Citrus Grove	1-6	1291	1	1292	99	1
Coconut Grove	K-6	201	294	495	41	59
Comstock	K-3	938	322	1260	74	26
Coral Gables	K, 3-6	346	115	461	75	25
Coral Way	K-6	1524	16	1540	99	1
Dade	K, 4-6	253	326	579	44	56

Exhibit I(b)

DADE COUNTY PUBLIC SCHOOLS

Racial Composition as of September 27, 1971

South Central District—Elementary Schools (continued)

School	Grade	White	Black	Total	% White	% Black
Douglas	K-3	407	898	1305	31	69
Dunbar	K, 4-6	298	601	899	33	67
Earlington Hts.	K-6	8	889	897	1	99
Flagler, H. M.	K-6	721	16	737	98	2
Floral Heights	K-6	0	843	843	0	100
Kensington Park	K-6	1258	15	1273	99	1
Key Biscayne	K-6	627	3	630	99	1
Kinloch Park	K-6	712	22	734	97	3
Melrose	K, 4-6	386	384	770	50	50
Merrick	K, 3-6	358	91	449	80	20
Miramar	K-3	268	303	571	47	53
Pharr, Kelsey	K, 4-6	439	493	932	47	53
Riverside	K, 4-6	861	608	1469	59	41
Santa Clara	K-2	204	427	631	32	68
Shenandoah	1-6	1103	0	1103	100	0
Silver Bluff	K-6	724	3	727	99	1
Southside	1-6	382	5	387	99	1
Sunset	K, 3-6	484	147	631	77	23
Tucker, F. S.	K-3	96	463	559	17	83
West Dunbar	K-3	323	463	786	41	59
W. Laboratory	K-6	311	91	402	77	23
Wheatley, P.	3-6	441	528	969	46	54
Total (K-6)		16,881	10,407	27,288	62	38

South Central District—Secondary Schools

School	Grade	White	Black	Total	% White	% Black
Allapattah Jr.	7-8	377	768	1145	33	67
Brownsville Jr.	7	241	612	853	28	72
Carver, G. W. Jr.	7	311	218	529	59	41
Citrus Grove Jr.	8	893	439	1332	67	33
Coral Gables Sr.	10-12	2488	489	2977	84	16
Kinloch Park Jr.	7-9	1652	27	1679	98	2
Lee, Robert E. Jr.	8-9	406	598	1004	40	60
Merrit, Ada Jr.	7	721	474	1195	60	40
Miami Jackson Sr.	10-12	430	2142	2572	17	83
Miami Sr.	10-12	4741	264	5005	95	5
Ponce de Leon Jr.	8-9	909	385	1294	70	30
Shenandoah Jr.	7-9	1928	4	1932	99	1
Washington, B. T. Jr.	9	745	447	1192	62	38
Total (7-12)		15,842	6,867	22,709	70	30
District Total	K-12	32,723	17,274	49,997	70	30

Exhibit 1(b)

DADE COUNTY PUBLIC SCHOOLS

Racial Composition as of September 27, 1971

Southwest District—Elementary Schools

School	Grade	White	Black	Total	% White	% Black
Banyan	K-6	704	0	704	100	0
Blue Lakes	K-6	1041	0	1041	100	0
Coral Park	K-6	898	0	898	100	0
Coral Terrace	K-6	802	2	804	99	1
Cypress	K-6	841	0	841	100	0
Emerson	K-6	942	0	942	100	0
Everglades	K-6	875	1	876	99	1
Fairchild, D.	K-6	542	78	620	87	13
Fairlawn	K-6	831	0	831	100	0
Flagami	K-6	811	2	813	99	1
Greenglade	K-6	738	1	739	99	1
Kendale	K-6	558	1	559	99	1
Kenwood	K-6	799	4	803	99	1
Lee, J.R.E. Ctr.	K-	1	59	60	2	98
Leewood	K-5	733	210	943	78	22
Ludlam	K-6	401	248	649	62	38
Martin, F.C.	K-6	581	355	936	62	38
Olympia Heights	K-6	840	2	842	99	1
Rockway	K-6	818	1	819	99	1
Royal Palm	K-6	966	6	972	99	1
Seminole	K-6	972	2	974	99	1
Silver Oaks	1-6	2	7	9	22	78
Snapper Creek	K-6	797	0	797	100	0
South Miami	K-6	475	171	646	74	26
Sunset Park	K-6	851	8	859	99	1
Sylvania Heights	K-6	741	6	747	99	1
Tropical	K-6	1014	12	1026	99	1
Village Green	K-6	906	2	908	99	1
Vineland	K-5	525	159	684	77	23
Total (K-6)		21,005	1,337	22,342	94	6

Exhibit I(b)

DADE COUNTY PUBLIC SCHOOLS

Racial Composition as of September 27, 1971

Southwest District—Secondary Schools

School	Grade	White	Black	Total	% White	% Black
Ctr. for Spec. Inst.-S.W.	7-12	1	2	3	33	67
Glades Jr.	7-9	2013	4	2017	99	1
Miami Coral Park Sr.	10-12	2711	0	2711	100	0
Miami Killian Sr.	9-12	2709	734	3443	79	21
Richmond Heights Jr.	7-9	943	910	1853	51	49
Riviera Jr.	7-9	2095	5	2100	99	1
Rockway Jr.	7-9	1838	0	1838	100	0
Silver Oaks	7-12	23	54	77	30	70
South Miami Jr.	7-9	1023	246	1269	81	19
South Miami Sr.	10-11	1306	126	1432	91	9
Southwest Clinical Sch.	7-9	48	3	51	94	6
Southwest Miami Sr.	10-12	3132	75	3207	98	2
West Miami Jr.	7-9	1894	0	1894	100	0
Total (7-12)		19,736	2,159	21,895	90	10
District Total	K-12	40,741	3,496	44,237	92	8

South District—Elementary Schools

School	Grade	White	Black	Total	% White	% Black
Air Base	K-6	1170	101	1271	92	8
Avocado	K-6	700	18	718	97	3
Bel-Aire	K-4	285	237	522	55	45
Caribbean	K-6	1092	51	1143	96	4
Colonial Drive	K-6	530	216	746	71	29
Cooper, N. K.	K-3	272	364	636	43	57
Coral Reef	K-5	764	188	952	80	20
Cutler Ridge	K-6	1018	19	1037	98	2
Florida City	K-2	154	336	490	31	69
Goulds	K-6	41	318	359	11	89
Gulfstream	K-6	592	22	614	96	4
Howard Drive	K-5	556	171	727	76	24
Leisure City	K-6	1066	9	1075	99	1
Lewis, A. L.	K, 4-6	142	394	536	26	74
Miami Heights	K-6	884	80	964	92	8
Moton, R. R.	K, 5-6	180	314	494	36	64
Naranja	K-6	281	304	585	48	52
Palmetto	K-5	559	179	738	76	24
Perrine	K-4	248	145	393	63	37
Pinecrest	K-6	859	0	859	100	0

Exhibit I(b)

DADE COUNTY PUBLIC SCHOOLS

Racial Composition as of September 27, 1971

South District—Elementary Schools (continued)

School	Grade	White	Black	Total	% White	% Black
Pine Villa	K-6	68	1072	1140	6	94
Redland	K-6	676	97	773	87	13
Redondo	K-6	471	17	488	97	3
Richmond	K-6	177	488	665	27	73
South Miami Hts.	K-6	877	41	918	96	4
West Homestead	K, 3-6	216	569	785	28	72
Whispering Pines	K-6	779	1	780	99	1
Total (K-6)		14,657	5,751	20,408	72	28

South District—Secondary Schools

School	Grade	White	Black	Total	% White	% Black
Cutler Ridge Jr.	7-9	1535	417	1952	79	21
Homestead Jr.	7-9	1007	650	1657	61	39
Mays Jr.	7-9	1189	701	1890	63	37
Miami Palmetto Sr.	10-12	3228	419	3647	89	11
Palmetto Jr.	7-9	1677	33	1710	98	2
Redland Jr.	7-9	619	180	799	77	23
South Dade Sr.	10-12	1593	923	2516	63	37
Total (7-12)		10,848	3,323	14,171	77	23
District Total	K-12	25,505	9,074	34,579	74	26
SYSTEM-WIDE TOTAL	K-12	182,029	63,213	245,242	74	26

in the

Supreme Court

of the

United States

OCTOBER TERM, 1971

No. 71-918

ALICE LOVE, et al,

Petitioner,

vs.

DADE COUNTY SCHOOL BOARD, et al,

Respondent.

BRIEF AND APPENDIX IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

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MIAMI REVIEW